THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 18071 OF 1998

Between:

K.Srinivasa Reddy ….. Petitioner

And

1. The Officer Commanding

983, Tpt Coy ASC (3 Ton)

C/o 56 APO and two others

…. Respondents

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 18071 OF 1998

ORDER:

In this writ petition, the petitioner seeks a direction to the respondents to reinstate him into service as a Recruitee Driver with immediate effect holding that he is deemed to be in continuous service, with effect from 27.10.1995, with all consequential benefits.

2. Facts, to the extent necessary for this writ petition, are that the petitioner was recruited as a Driver in the Army with effect from 23.02.1994. It is his case that his recruitment was after a thorough medical check up and verification of his antecedents. Petitioner would submit that, while working as a Driver, he had proceeded on leave to his native place and on his return to duty he found that some of his personal articles, including his uniform, were missing for the allotted common place of his set in the Army. It is the case of the petitioner, that on finding his uniform missing, he expressed his anger against the inmates who were present and as a result he could not attend duty immediately without his uniform. It is his case that the incident regarding theft was brought to the notice of the commanding officer who instead of enquiring into the matter shouted at him for not coming to duty with uniform. According to the petitioner he was made to stay in the hospital for a period of two months and that suddenly on 27.10.1995 the 1st respondent issued a copy of the proceedings dated 26.10.1995 as also the movement order dated 26.10.1995. According to the petitioner, from the said letter and orders he came to know that he was locally discharged from service placing him in medical category EEE with effect from 27.10.1995 F.N. He was asked to go to his native place for which he was issued a single journey railway warrant. Petitioner would contend that since he did not know the reasons for his discharge from service he submitted a representation to the 1st respondent on 23.04.1996 requesting that he be taken back to duty. The 1st respondent informed him, vide letter dated 07.05.1996, that he was discharged on

medical grounds and with regards pensionary benefits he may contact the 2nd respondent. The 2nd respondent, vide letter dated 28.01.1997, directed the 1st respondent to cancel the Part-II order dated 27.10.1995 issued by the 1st respondent locally discharging the petitioner from service, as the same was technically wrong, was not valid and was contrary to the prescribed procedure. The said proceedings dated 28.01.1997 refer to the fact that the medical documents, regarding the petitioner's discharge were not available in record. Petitioner would contend that his being discharged from service, with effect from 27.10.1995, is wholly illegal, arbitrary and contrary to the rules. He also states that though the letter dated 25.02.1995 specifically refers to the fact that a fresh Part II order was being forwarded, no such orders were sent to him nor was he notified thereof. It is his case that since the earlier order of discharge dated 27.10.1995 was cancelled, there was no valid discharge. Petitioner's papers, regarding his disability pension claim, was processed and forwarded to the 1st respondent for his sanction, vide letter dated 18.03.1997. However the 1st respondent, vide letter dated 16.09.1997, informed that the petitioner was not entitled for disability pension as he was discharged on the ground of Schizophrenia which was treated as sudden in nature and as not related to service. Petitioner would contend that this conclusion of the 1st respondent to deny him disability pension is also illegal and arbitrary. According to the petitioner, since he was subjected to medical check up before recruitment, if he had indeed suffered from Schizophrenia, it would have been detected before his recruitment and merely because he showed anger, on the theft of his personal articles, it could not be termed that he was suffering from Schizophrenia which was sudden in nature. The 2nd respondent, vide proceeding dated 8.10.1997, informed the petitioner of his disentitlement for disability pension and that he could prefer an appeal against rejection of disability pension. The petitioner preferred an appeal to the 1st respondent on 10.3.1998, wherein he requested for re-examination by a medical board and that he be reinstated into service. The appeal preferred by the petitioner was forwarded by the 2nd respondent to the 1st respondent on 27.03.1998 and though three months time elapsed from the date of submission of the appeal and inasmuch as no order was passed thereon, the petitioner has approached this Court.

3. In the Counter-affidavit filed by Sri Ravinder Singh, it is stated that the petitioner was legally discharged from service on 27.10.1995 being placed in low medical

category “EEE” on account of “Schizopherenia ICD-295” under Rule 13(3), Item III of Army Rules 1954. It is stated that the petitioner was brought before the invalidating medical board and the Medical Board, in its proceedings dated 28.8.1995, opined that the disability “Schizopherenia ICD-295” was a constitutional disorder not connected with service. Petitioner’s disability was assessed at 60% and it was held as neither attributable to nor aggravated by military service. The disability pension claim of the petitioner submitted on 18.03.1997 was examined and was rejected on the ground that “Schizopherenia ICD-295” was not connected to his service. The order of rejection dated 16.09.1997 was communicated to the petitioner, vide letter dated 08.10.1997, informing him that he could prefer an appeal not later than six months from 16.09.1997. However the petitioner was paid the invalid gratuity amount of Rs.1371/-.

4. Reference is made by Sri Deepak Bhattacharjee, leaned standing counsel appearing on behalf of the respondents, to para 173 of Pension Regulations for the Army 1961 wherein, in Part I, the primary condition is that, unless otherwise specifically provided, a disability pension may be granted to an individual who is invalidated out of service on account of disability which is attributable to or aggravated by military service and is assessed at 20% or above. Respondents would contend that in the petitioner’s case, the invalidating disability “Schizopherenia ICD-295” was found neither attributable to nor aggravated by military service. Respondents rely on the judgment of the Supreme Court in **Union of India Vs. Baljit Singh** wherein the Supreme Court held that if the disease is accepted as having arisen in service, it must also be established that the conditions are deemed to the circumstances of duties in military service. It is stated that the appeal preferred by the petitioner on 10.03.1998 was sent for adjudication to the Ministry of Defence and the appeal was disposed of, during the pendency of the writ petition, by order dated 08.10.1999.

5. Sri S. Srinivas, learned Counsel appearing on behalf of Sri Vemuri Venkateswara Rao, learned counsel for the petitioner, would contend that though the petitioner had preferred an appeal against the very invalidation itself, the appeal was processed as an appeal against the order rejecting payment of disability pension and that the question, as to whether the petitioner should have been invalidated on medical grounds, was not examined by the appellate authority. Learned Counsel would contend that Section 26 of the Army Act requires the respondents to entertain and

examine the appeal on merits.

Section 26 of the Army Act reads as under:

Remedy of aggrieved persons other than officers:

1. Any person subject to this Act other than an officer who deems himself wronged by any superior or other officer may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving and may, if attached to a troop or company, complain to the officer commanding the same.

2. When the officer complained against is the officer to whom any complaint should, under sub-section (1), be preferred, the aggrieved person may complain to such officer's next superior officer.

3. Every officer receiving any such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complainant; or, when necessary, refer the complaint to superior authority.

4. Every such complaint shall be preferred in such manner as may from time to time be specified by the proper authority.

5. The Central Government may revise any decision by (the Chief of the Army Staff) under sub-section (2), but, subject thereto, the decision of (the Chief of the Army Staff) shall be final.

6. Sri Deepak Bhattacharjee, learned Standing Counsel for the respondents, would submit that since the petitioner was no longer in service and inasmuch as the remedy under Section 26 applied only to serving Army Officers and personnel, the remedy under Section 26 was not available to the petitioner. Learned Standing Counsel would however fairly draw the attention of this Court to the amended Rule 17 of the Entitlement Rules 1982 which prescribes the appropriate/competent medical authorities for giving medical opinion on the aspects of assessment of disability and acceptance of death/disablement due to causes attributable to/aggravated by military services. According to the learned standing counsel, the remedy of the petitioner, to question the order of the Medical Invalidation Board, was to prefer a first appeal to the Deputy Director General, Armed Forces Medical Services (Pension) in the office of the Director General Armed Forces, Medical Services and thereafter a second appeal to the Director General, Armed Forces Medical Services. Learned Standing Counsel would submit that this remedy of first appeal and second appeal is both against medical invalidation and assessment of the extent of disability by the competent Medical Board. Learned Standing Counsel would however submit that as the petitioner chose not to invoke the remedy of an

appeal to the authorities concerned, soon after his discharge, he was not entitled to contend that he should be permitted to prefer an appeal after a lapse of more than a decade. Learned Counsel would submit that the order of discharge was passed on 27.10.1995 and the present writ petition was filed nearly three years thereafter on 25th June 1998. A perusal of the proceedings of the respondents dated 28.01.1997 would itself indicate that the earlier order, discharging the petitioner from service, passed on 27.10.1995 was found to be incorrect and that a fresh Part II order mentioning the correct Army Rules 13(3)(IV) was directed to be published. In compliance with the proceedings dated 28.01.1997 a fresh part II order was passed on 25.02.1997 and the copy there of marked to the petitioner. It is thus clear that it was only on 25.02.1997 that the actual order of discharge was passed. The petitioner was informed, vide proceedings dated 8.10.1997, that he could prefer an appeal, against the decision to deprive him of his disability pension, to the Chief CDA (P), Allahabad and accordingly the petitioner, vide appeal dated 10.03.1998, requested the Chief CDA (Pension) to take him back into service or to recall him for physical check up. It is true that the appeal dated 10.03.1998 to the Chief CDA (Pension) could only have been with regards his disentitlement of disability pension and not with regards his medical invalidation. The fact, however, remains that in the said appeal dated 10.03.1998 the petitioner not only informed the appellate authority that he was physically fit but also that he was willing to undergo a medical examination.

7. On a query from the Court, Sri Deepak Bhattarcharjee, learned Standing Counsel for the respondents, would fairly submit that he could not find any provision in the entitlement rules with regards the time limit for preferring an appeal against the orders of the Medical Invalidation Board. In such circumstances, where the petitioner preferred an appeal against his medical invalidation, albeit to an incompetent authority, on 10.3.1998, just one year after the valid proceedings of discharge dated 25.2.1997 and soon after filed the present writ petition, and more so in the absence of any limitation in the entitlement rules to prefer an appeal, I find no reason to disentitle the petitioner from availing his remedy of an appeal against the order of the Medical Invalidation Board.

8. Sri S. Srinivas, learned Counsel appearing on behalf of the petitioner, submits

that the petitioner would prefer an appeal to the Deputy Director General, Armed Forces Medical Services, Army Headquarters, New Delhi, against the order of the Medical Invalidation Board, within four weeks from the date of receipt of a copy of this order. On such an appeal being preferred, under Section 17 of the Entitlement Rules, the Deputy Director General, Armed Forces Medical Services (Pension) shall consider the validity of the orders passed by the Medical Invalidation Board in holding that the petitioner was suffering from “Schizopherenia ICD-295”. The Deputy Director General, if he considers it necessary, shall constitute a Medical Board to re-examine the mental condition of the petitioner herein. The appeal preferred by the petitioner shall be disposed of by the Deputy Director General, Armed Forces Medical Services (Pension) within three months from the date of receipt of a copy of the appeal.

9. Sri S. Srinivas learned Counsel appearing on behalf of petitioner, would submit that since the entire dispute revolves around the mental condition of the petitioner and as to whether he is suffering from “Schizopherenia ICD-295” and since psychiatry is a specialized field of medicine, it is necessary that a Medical Board be constituted with expert Psychiatrists instead of leaving the matter to be considered by persons who may not have the necessary expertise in this regard. While I find considerable force in the submission of Sri S. Srinivas, I do not consider it appropriate to fetter the manner in which the appellate authority should consider and deal with the appeal to be filed by the petitioner herein. I have no reason to doubt that, if it is so required, the appellate authority would undoubtedly constitute a Medical Board with experts in the field of Psychiatry to have the petitioner examined.

10. The Writ petition is accordingly disposed of. However, in the circumstances without any order as to costs.

Date: 02.02.2006.

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RAMESH RANGANATHAN, J

MRKR/ASP